

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



74-1101

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

In the Matter

:

-of-

:

74-1101

ALPHONSE PERSICO,

:

Appellant.

:

-----X

APPELLANT'S APPENDIX

B  
P/S



NANCY ROSNER  
Attorney for Appellant  
401 Broadway  
New York, New York 10013  
(212) 925-8844

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

In Re  
ALPHONSE CARMINE PERSICO,

A Witness Before The Special  
September, 1972 Grand Jury

74 Civ. 126

Index to Record

Docket Entries	A-B
Order of Contempt	1
Certified Copy of Order of Contempt with Return	2
Petition for Writ of Habeas Corpus Ad Prosequendum	3
Transcript of Proceedings 1/23/74	4
Notice of Appeal	5
Transcript of Proceedings 1/24/74	6

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

In the Matter

-of-

NOTICE OF APPEAL

ALPHONSE PERSICO,  
a Grand Jury witness,

Appellant.

-----X

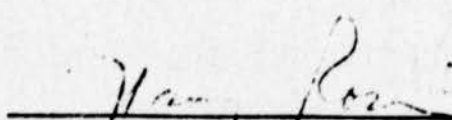
S I R S :

PLEASE TAKE NOTICE that ALPHONSE PERSICO, hereby  
appeals to the United States Court of Appeals for the Second Circuit from  
the order of the Hon. Orrin Judd, U. S. D. J., entered January 24, 1974,  
holding him in summary contempt pursuant to 28 U. S. C. § 1826(a) (1970);  
denying him leave to move to suppress; and denying him bail pending  
appeal of the summary contempt order.

Dated: New York, New York,  
January 25, 1974.

Yours, etc.,

TO:  
Robert G. Del Grosso, Esq.  
Special Attorney  
Department of Justice  
225 Cadman Plaza East  
Brooklyn, New York

  
NANCY ROSNER  
Attorney for Appellant  
Office & P. O. Address  
401 Broadway  
New York, New York 10013  
925-8844

Alphonse Persico,  
Federal Detention Headquarters  
427 West Street  
New York, New York

Clerk, United States Court of Appeals  
Second Circuit  
United States Courthouse  
Foley Square  
New York, New York



**United States District Court**  
**FOR THE**

**EASTERN DISTRICT OF NEW YORK**

**To**

**Alphonse Persico  
1409 Bath Avenue  
Brooklyn, New York**

**You are hereby commanded to appear in the United States District Court for the Eastern  
District of New York at 225 Cadman Plaza East in the city of  
Brooklyn on the 2nd day of January 19 74 at 10 o'clock A M. to  
testify before the Grand Jury and bring with you**



This subpoena is issued on application of the  
Robert Del Grosso  
Department of Justice  
Telephone 596-3761

LEWIS ORGEL

Clerk.

Date December 21, 1973

By

*G. J. Henry*  
Deputy Clerk.

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

RETURN

Received this subpoena at  
and on  
within named  
by delivering a copy to  
allowed by law.

*Brooklyn NY*  
at

on *12/26*

I served it on the

and tendering<sup>2</sup> to

the fee for one day's attendance and the mileage

Date , 19

By

Service Fees

Travel \$

Services \$

Total \$

<sup>2</sup> Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

EASTERN DISTRICT OF NEW YORK

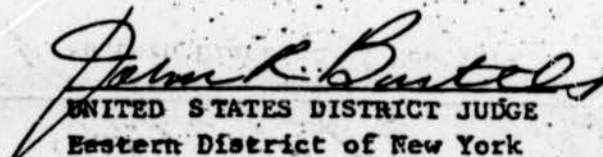
IN RE ALPHONSE CARMINE PERSICO

ORDER

An application has been made to this Court by the United States Attorney (see application and affidavit annexed and marked "A" and "B" respectively) pursuant to his authorization by Henry E. Petersen, Assistant Attorney General for the Criminal Division of the United States Department of Justice (see copy of letter annexed and marked "C"), wherein the affiant has represented that in his judgment the testimony of Alphonse Carmine Persico, before the Special United States Grand Jury in the Eastern District of New York, is necessary to the public interest. Pursuant to Title 18, United States Code, Sections 6002, 6003, it is hereby

ORDERED that Alphonse Carmine Persico answer all questions directed to him by the aforesaid Grand Jury in the Eastern District of New York. It is further

ORDERED, that Alphonse Carmine Persico shall not be excused from testifying or producing books, papers, or other evidence on the ground that testimony or evidence required of him may tend to incriminate him or subject him to a penalty of forfeiture.

  
UNITED STATES DISTRICT JUDGE  
Eastern District of New York

Dated: Brooklyn, New York

MC 28 1963



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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IN RE

ORDER

ALPHONSE CARMINE PERSICO,

A WITNESS BEFORE THE SPECIAL SEPTEMBER,

1972 GRAND JURY.

-----X

On this 23rd day of January, 1974, this matter comes on for the attention of the Court upon the application of the United States of America, by and through Robert G. DelGrosso, Special Attorney, Department of Justice, for an order finding Alphonse Carmine Persico in direct contempt of court for his refusal to answer questions before the Special September, 1972 Grand Jury at Brooklyn, New York, on January 23, 1974. Alphonse Carmine Persico was present in person and with his attorney, Nancy Rosner, New York, New York.



After hearing argument and being advised in the premises, the Court finds that Alphonse Carmine Persico appeared before the Special September, 1972 Grand Jury sitting in Brooklyn, New York, on January 23, 1974; that Alphonse Carmine Persico refused to answer questions propounded by said Grand Jury after having been granted immunity from prosecution under Title 18, United States Code, Section 6003 and ordered to answer questions before the said Grand Jury pursuant to the order of Honorable John R. Bartels, United States District Judge, Eastern District of New York, of December 28, 1973 (upon the application of Edward J. Boyd V, United States Attorney, Eastern District of New York); that Alphonse Carmine Persico is in direct contempt of the order of this Court and should be committed to the custody of the United States Marshal.

IT IS ORDERED, ADJUDGED AND DECREED that Alphonse Carmine Persico is in direct contempt of this Court for his failure to answer questions before the said Grand Jury and he is hereby committed to the custody of the United States Marshal for the Eastern District of New York, for sixty (60) days from the date of this Order, or until such time as he purges himself of this contempt.

IT IS SO ORDERED.

s/

UNITED STATES DISTRICT JUDGE  
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

-----X

IN THE MATTER :

of :

ALPHONSE PERSICO. :

-----X

United States Courthouse  
Brooklyn, New York

January 23, 1974  
11:05 o'clock a.m.

B e f o r e:

HONORABLE ORRIN G. JUDD, U.S.D.J.

In Re: Grand Jury

**EMANUEL KARR**

OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FEDERAL COURT HOUSE, ROOM 362  
225 CADMAN PLAZA EAST  
BROOKLYN, N. Y. 11201

TEL. ULSTER 2-7105-7106-7107

Appearances:

NANCY ROSNER, ESQ.,  
Attorney for Alphonse Persico

EDWARD J. BOYD, ESQ.,  
United States Attorney  
for the Eastern District of New York

BY: ROBERT DelGROSSO, ESQ.,  
-and-  
FRED BARLOW, ESQ.,  
Assistant United States Attorneys

1 MR. DEL GROSSO: Your Honor, the Government is  
2 moving to have Mr. Alphonse Persico --

3 THE COURT: Where is he?

4 MRS. ROSNER: He is present in the courtroom.

5 MR. DEL GROSSO: Your Honor, the Government is  
6 moving to have Mr. Alphonse Persico cited for contempt  
7 for refusing to answer questions put to him by the  
8 Grand Jury.

9 Your Honor, Mr. Persico was given immunity, which  
10 was signed by Judge Bartels.

11 THE COURT: He was here before me two weeks ago.

12 MR. DEL GROSSO: Yes, he was, your Honor. At  
13 that time, I guess, they wanted certain stipulations,  
14 but the Government claimed they were premature, and  
15 this time the Government is stating to the Court, and  
16 we have the Grand Jury Reporter, he is here, that Mr.  
17 Persico refused to answer the questions after he was  
18 given immunity.

19 MRS. ROSNER: Judge Judd, Mr. DelGrosso got the  
20 jump on me, I have moving papers, and I thought we were  
21 having a hearing on my application.

22 THE COURT: Well, I haven't anything of yours.

23 MRS. ROSNER: Well, I will tell you what the  
24 basis of our application is, Judge:

25 Mr. Persico returned this morning, as directed

1 by your Honor, and I think I am going to be held in  
2 contempt in the Southern District, but I am here to  
3 represent him --

4 THE COURT: I said, you can get some other  
5 lawyer.

6 MRS. ROSNER: True, Judge.

7 The situation is this:

8 In August of this year when Mr. Persico was  
9 represented by other counsel, a civil action was com-  
10 menced before Judge Dooling, which is entitled 73-C-1213,  
11 In the Matter of Wire Interceptions of Oral Communica-  
12 tions of Alphonse Persico, Dolores Persico and Theodore  
13 Persico, and at that time, the relief requested was the  
14 suppression of the use in evidence of materials obtained  
15 as the result of the unlawful electronic surveillance  
16 at Mr. Persico's home during the spring of 1973.

17 Your Honor, on August 20th, Judge Dooling entered  
18 an Order, indicating that the application to suppress  
19 was premature because at that point in time there was  
20 no intended use in evidence of the matters intercepted--

21 MR. DEL GROSSO: Your Honor, I hate to interrupt--

22 MRS. ROSNER: Please, Mr. DelGrosso --

23 THE COURT: Just let me hear Mrs. Rosner.

24 MR. DEL GROSSO: Can we get to the point?

25 MRS. ROSNER: Mr. Del Grosso, in fact, represented



1 the Government in that proceeding, and I have copied  
2 for the Court's inspection Judge Dooling's opinion in  
3 that matter.

4 Now, on September -- I am sorry, on January 2,  
5 1974, in a situation very much like that before us,  
6 Judge Dooling issued a memorandum and Order in the  
7 matter of the Grand Jury subpoena of Fred Vigorito,  
8 et al.

9  
10 (continued on next page.)

SS fls

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SS:SS  
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1 MRS. ROSNER: The background facts are analogous  
2 to that which we can't hear, your Honor, being that the  
3 person subpoenaed before the grand jury in that matter  
4 had previously been advised that they were the subject  
5 of electronic surveillance, had received the statutory  
6 notification.

7 Pursuant to Section 2515 of Title 18 and pur-  
8 suant to Rule 41, what is now 41F, the Vigorito  
9 subpoenas were moved -- that's not correct. The  
10 person subpoenaed moved to suppress the use in evidence  
11 before the grand jury under 2515 of what they contended  
12 were the results of unlawful electronic surveillance.  
13 Judge Dooling granted that application to this extent,  
14 your Honor. He ordered that the application, the  
15 affidavits and orders pursuant to which the electronic  
16 surveillance was employed be turned over to counsel  
17 for the subpoenaed persons and that pending the turn-  
18 ing over of those matters, and the reasonable time  
19 for counsel to make a motion to suppress pursuant to  
20 41-F, that no use before the grand jury be made of  
21 the result of that electronic surveillance.

22 Judge Dooling's order, your Honor, in the  
23 Persico civil matter leaves open the possibility for  
24 the application to be renewed when the matter is  
25 ripe as we submit it is under the Vigorito decision,

21 so that relying on 2515 and relying on Rule 41-F,  
2 we would respectfully suggest to the Court that under  
3 the related rule of this district, which was codified,  
4 I think, last spring, this matter should not go back  
5 to Judge Dooling since the civil matter is still  
6 pending which was initiated by Mr. Persico here in  
7 the summer of this year, so that Judge Dooling can  
8 pass upon whether in fact this is a situation similar  
9 to Vigorito where a motion to suppress may now be  
10 made.

11 I have also, your Honor -- I might add that  
12 after Judge Dooling's decision in Vigorito, Mr.  
13 DelGrosso so moved to reargue on the basis of the  
14 Calandra case which we discussed the last time the  
15 matter was on before you, Judge, and Judge Dooling  
16 pointed out that Calandra confines itself to viola-  
17 tions of the Fourth Amendment by unlawful searches  
18 and seizures not including unlawful electronic sur-  
19 veillance for which there is a codified statutory  
20 remedy. That is 18 United States Code Section 2515  
21 and Judge Dooling refused to change his order after  
22 the decision in Calandra, adhering to his decision  
23 that 2515 in combination with 41-F provide a vehicle  
24 and an appropriate remedy for a person subpoenaed  
25 before a grand jury to suppress what he believes to



1 3 be the use in evidence of unlawful electronic sur-  
2 veillance.

3 As your Honor may remember from the last time  
4 we appeared here, Mr. Persico has been notified that  
5 there was electronic surveillance at his home during  
6 the spring of this year. We have never seen, your  
7 Honor, though we have requested the orders and  
8 affidavits upon which that electronic surveillance  
9 was employed, so that the relief which we request at  
10 this point, your Honor, most respectfully, is to have  
11 this matter referred to Judge Dooling since a civil  
12 action has been commenced which is now ripe for  
13 adjudication by Judge Dooling.

14 I would ask to hand up to the Court the-  
15 memorandums and orders to which I've made reference.

16 THE COURT: I'll hear Mr. DelGrosso.

17 MR. DEL GROSSO: Your Honor, if I may, there  
18 are factual mistakes here by Mrs. Rosner as to any  
19 reargument by Mr. DelGrosso before Judge Dooling with  
20 Calandra. I've never been before Judge Dooling sub-  
21 sequent to a motion made by Mr. Persico, his wife  
22 and brother.

23 MRS. ROSNER: I have a reargument decision  
24 there. I assumed Mr. DelGrosso was the assistant.  
25 This does not relate to Persico.

41 MR. DEL GROSSO: If I may, your Honor, Mrs.  
2 Rosner has gone on and talked about the electronic  
3 surveillance and what not. Here's the thing that  
4 the government has made a motion at this time to  
5 have Mr. Persico cited for contempt for refusal to  
6 answer the question put to him. There was never any  
7 question put to the government as to whether or not  
8 any questions that were to be asked of him were the  
9 result of any illegal electronic surveillance which  
10 was put forth in Gelbard.

11 At this time, I think it's really begging  
12 the question, don't have to say it any more. Mr.  
13 Persico does know he was the subject of electronic  
14 surveillance. I've put it on the record.

15 On March 21, 1973 an order was signed by Judge  
16 Bartels for the interception of oral communications  
17 for 15 days.

18 April 9, 1973, Judge Bartels signed an exten-  
19 sion to the order for the interception of oral  
20 communications. That also was 15 days. I'm sorry,  
21 your Honor, I should have said for number 1 or 2, this  
22 was at 1409 Bath Avenue, the home of the witness.

23 Also, May 8th, 1973, also at 1409 Bath Avenue,  
24 Judge Neaher signed an order directing the interception  
25 or oral communications at that address for 15 days.

51 My reading of Gelbard puts no great burden on  
2 the government other than what we have said. There  
3 have been three orders. The Vigorito matter is not  
4 in question here.

5 Mr. Persico's civil matter is not in question  
6 here. I would say that if a further reading of the  
7 statute, if you look at 2520, if there's an order it's  
8 a complete defense. There have been three orders in  
9 this case.

10 MRS. ROSNER: May I respond briefly just to  
11 clear up some factual contentions? Mr. Persico re-  
12 fused to respond to the question -- I assume -- some  
13 question was put by Mr. DelGrosso. A statement which  
14 I prepared for him was read to the grand jury asking  
15 to be brought before your Honor in order to make this  
16 application and indicating that, of course, he would  
17 be bound and would answer any questions if your Honor  
18 ordered him to do so after hearing our application.

19 The specific basis for his refusal to answer  
20 and the grand jury stenographer can confirm this  
21 since he's sitting in the Courtroom with the minutes,  
22 was that he wished to come before the Court to have  
23 this matter referred to Judge Dooling and to make his  
24 motion to suppress pursuant to Judge Dooling's de-  
25 cision both in the civil matter which Mr. Persico

6 1 initiated and the Vigorito case which does not in-  
2 volve Mr. Persico which is the identical situation we  
3 have here.

4 MR. DEL GROSSO: The Vigorito matter is not the  
5 same thing in that Mr. Vigorito was not granted  
6 immunity. We're here strictly on a contempt issue.  
7 That's what the government is asking for. We weren't  
8 here to determine whether or not -- at least the  
9 government, to find out whether or not Judge Dooling  
10 is to continue this case on a civil matter. We came  
11 here on a contempt situation.

12 MRS. ROSNER: Mr. DelGrosso points something  
13 out which has to be met. The subpoenaed person in  
14 Vigorito was asked for voice exemplars which, of  
15 course, are not covered by the Fifth Amendment under  
16 Dionisio and Maia.

17 There was no need to confer immunity. There's  
18 nothing suggestive in Gelbard or any of the cases, in-  
19 cluding Calandra that a valid objection to testifying  
20 on the basis of 18 United States Code 2515 is wiped  
21 out by a grant of immunity and in fact, the petition-  
22 ers in the Gelbard case had, of course, been given  
23 immunity and nevertheless were held not to be in  
24 contempt because they had a valid statutory basis for  
25 refusing to answer. Immunity has nothing to do with



1 the objection here.

2 THE COURT: Let me hear the grand jury reporter.

3 D A V I D R A D Z I K O W S K I , having been duly sworn

4 by the Clerk of the Court, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. DEL GROSSO:

7 Q What is your occupation?

8 A Grand jury stenographer.

9 Q Were you the grand jury stenographer for the  
10 instant case we're before the Court now; that is, with  
11 Alphonse Persico?

12 A Yes, I was.

13 Q Approximately 10:30 this morning?

14 A Yes sir.

15 Q Now, if possible, I think, was Mr. -- do you  
16 have the transcript with you, sir?

17 A Yes, I do for the entire grand jury section.

18 Q If possible, since it's short, could we have  
19 you read it on the record. Was Mr. Persico granted immunity?

20 A Yes sir.

21 MRS. ROSNER: I have no objection to the  
22 reporter reading the minutes.

23 THE COURT: Was he sworn?

24 THE WITNESS: Yes.

25 THE COURT: Read the minutes.

1  
2 THE WITNESS: The entire minutes?

3 THE COURT: Yes.

4 THE WITNESS: The witness having been sworn in  
5 before the Foreman of the grand jury has testified as  
6 follows;

7 "Question: Could you state your name for the  
8 ladies and gentlemen of the grand jury?

9 "Answer: Alphonse Persico.

10 "Question: Where do you reside?

11 "Answer: 1409 Bath Avenue, Brooklyn.

12 "Question: Are you represented by counsel?

13 "Answer: Yes.

14 "Question: Who is that?

15 "Answer: Nancy Rosner.

16 "Question: Is she outside this grand jury room?

17 "Answer: Yes.

18 "Question: Mr. Persico, are you employed?

19 "Answer: I refuse to answer that under the  
20 ground my answer may tend to incriminate me.

21 "Question: You refuse to answer then on the  
22 ground it may tend to incriminate you?

23 "Answer: Yes.

24 "Question: I have a copy of an order signed  
25 by Judge John Bartels. It is signed September 28th,

1  
2 1973. This order states that it will give you  
3 immunity. By this we mean, sir, you have youth  
4 immunity. By that I mean everything you say cannot  
5 be used against you in a Court of law. The only thing  
6 that I can tell you, sir, is that if you refuse to  
7 answer the questions stated to you you will be cited  
8 for contempt and immediately incarcerated and, of  
9 course, if you like to answer the questions that are  
10 given here today, you may. Do you understand that,  
11 sir?

12 "Answer: Can I speak to my counsel about this.

13 "Question: Oh, yes, please do."

14 At this time, Mr. Persico left the grand jury  
15 chamber to consult with counsel.

16 "Question: I repeat the question, are you  
17 employed?

18 "Answer: I wish to be brought before the Judge  
19 so that I may move to suppress evidence deriving from  
20 unlawful electronic surveillance of my home. I rely  
21 on Sections USC Section 2515, FRCP Rule 41-F in the  
22 decision of Honorable Judge Dooling in the matter of  
23 the grand jury of Fred Vigorito. I wish to do so  
24 before answering any questions. I fully intend to  
25 comply with any lawful order of the Court to answer

1  
2 questions when and if I receive such order from the  
3 Court.

4 "Question: Is that it, sir?

5 "Answer: Yes.

6 "Question: Can we go out and see your attorney  
7 a moment?"

8 At this time, Mr. DelGrosso and Mr. Persico  
9 left the room whereupon they reentered the grand jury  
10 chamber.

11 "Question: Mr. Persico, I again ask you are  
12 you employed and is it my understanding you refuse to  
13 answer?

14 "Answer: On the ground that I just stated on  
15 the advice of my counsel.

16 "Question: You do realize, sir, that if you  
17 don't answer pursuant to immunity that was granted  
18 by Judge Bartels, you do realize that you can be in-  
19 carcerated for contempt?

20 "Answer: I only know what I was advised by  
21 my lawyer.

22 "Question: And you wish to see the Judge?

23 "Answer: Yes.

24 "Question: Fine."

25 Whereupon they left the grand jury chambers.



SS:GA  
T2R2 AM

1 THE COURT: What has that to do with any illegal  
2 surveillance?

3 MRS. ROSNER: Your Honor, we believe that the  
4 Government has not denied that the questions which are  
5 going to be propounded to Mr. Persico, and in fact his  
6 very subpoena here as a Grand Jury witness, results from  
7 the electronic surveillance of his home in the spring  
8 of this year.

9 THE COURT: That has nothing to do with his  
10 answering whether he was employed. I find he was in  
11 contempt. I'll sentence him to jail for sixty days.

12 MRS. ROSNER: May I be heard?

13 THE COURT: Yes.

14 MRS. ROSNER: I believe, your Honor, that the  
15 interceptions at his home in fact related to his employ-  
16 ment, and perhaps unlawful employment in various gambli-  
17 ing enterprises, so that the question, "Are you employed"  
18 may in fact, and we believe it does, derive from the  
19 interception of his communications at his home; the  
20 spring of this year.

21 Pursuant to the Vigorito decision, and relying  
22 on 2515, and Rule 41-F, we would move to suppress the  
23 questions and answers before the Grand Jury on the  
24 ground that they derive from that electronic surveillance.

25 THE COURT: Mr. Del Grosso?

MR. DEL GROSSO: Yes?

THE COURT: Did you need electronic surveillance in order to make it pertinent to your inquiry whether he was employed?

MR. DEL GROSSO: There are questions that have been formulated as a result of electronic surveillance which will deal with his employment. Yes, that is true, your Honor.

If I may go and say one thing, a little bit going into the matter which has been brought before the Court dealing with Mr. Vigorito --

THE COURT: It doesn't relate to this question, further questions that may be asked. It seems to me the application is premature.

MRS. ROSNER: If I may be heard further, your Honor, I think the Government has indicated enough to show that the application which we are making is not for the purpose of delay, and it is not frivolous, Judge. We have a serious contention here that the entire line of inquiry which the Government proposes, derives from the bugging of Mr. Persico's home.

THE COURT: Let him go back and find out what the questions are.

MRS. ROSNER: May we, since we are before the Court, in an effort to save time, have the Government

3 1 indicate to the Court the matters which it intends to  
2 inquire in.co?

3 THE COURT: I think the proper way if for Mr.  
4 Persico to be asked the questions, and see whether they  
5 do relate to this. Meanwhile, let me have the Orders,  
6 and I will sentence him to contempt for sixty days for  
7 refusal to answer a perfectly normal question.

8 MRS. ROSNER: He will return and answer pursuant  
9 to your direction.

10 MR. DEL GROSSO: They are in the Clerk's Office,  
11 in the custody of the Clerk.

12 THE COURT: Let's have him go back to the Grand  
13 Jury Room and see what the questions are.

14 MRS. ROSNER: We certainly will, your Honor.

15 MR. DEL GROSSO: I have a feeling we'll be back,  
16 too.

17 (Time Noted: 11:30 o'clock A.M.)

18 (Time Noted: 12:00 o'clock P.M.)

19 MR. DEL GROSSO: A further question has been  
20 asked as to the employment, your Honor. Mr. Persico  
21 again, refused on the ground, this time the ground that  
22 the question was formulated as a result of illegal  
23 electronic surveillance. The Government's position is  
24 that it is not formulated as a result of illegal elec-  
25 tronic surveillance; however, the question has been asked

4 1 with the electronic surveillance in mind.

19

2 THE COURT: What was the question?

3 MR. DEL GROSSO: The question was any other  
4 further employment. I did get one place of employment,  
5 and after that, no others.

6 MRS. ROSNER: Judge, rather than characterizing,  
7 since we again have the services of the Grand Jury  
8 Reporter, I would suggest we have the brief transcript.

9 THE COURT: Have him come up.

10 MRS. ROSNER: We'll waive all the qualifications.

11 M R. D A V I D R A D Z K O W S K I , having been previously  
12 Sworn, resumes the stand to testify as follows:

13 THE COURT: Please read the testimony; go ahead.

14 THE WITNESS: The entire minutes?

15 THE COURT: Just from where the question was  
16 asked.

17 THE WITNESS: Very well.

18 "Question: Are you employed at any other occupa-  
19 tion, or do you own any other businesses?"

20 MRS. ROSNER: May I suggest, Judge, we begin with  
21 the questions preceding that, relating to employment?

22 THE COURT: From where you began, after you read  
23 this morning.

24 MRS. ROSNER: Thank you, Judge.

25 THE WITNESS: Very well.



SS:ss  
2AM2

The witness having been reminded by the  
Foreman of the grand jury he's still under oath,

"Question: Mr. Persico --"

Mr. Persico asked to make a statement.

"THE WITNESS: About this immunity, how does  
this affect me in any prosecution with federal or  
state about questions asked here?

"MR. DEL GROSSO: Any testimony that you give  
here today cannot be used against you in any federal  
or state Court.

"THE WITNESS: Is that with the Internal  
Revenue and everything?

"MR. DEL GROSSO: That's right across the  
board. Anything you say today cannot be used against  
you. If the government should show independent  
evidence; that is, evidence independent of your  
testimony that can be used, however, anything you say  
cannot be used against you at any subsequent date that  
you may come before this grand jury. Do you under-  
stand that?

"THE WITNESS: Yes.

"Question: Are you employed, sir?

"Answer: Yes.

"Question: Where?

1  
2 "Answer: DACS.

3 "Question: Do you go there very often?

4 "Answer: No.

5 "Question: Can you estimate the number of  
6 times you go there, weekly or don't you even go there  
7 weekly?

8 "Answer: No, I don't go weekly. Once in a  
9 while.

10 "Question: When you say, 'once in a while,'  
11 what do you mean by that, once every two or three  
12 months?

13 "Answer: Yes.

14 "Question: What is your salary?

15 "Answer: It depends upon how much we earn. We  
16 have a slow season and a busy season.

17 "Question: Can you estimate your gross salary?

18 "Answer: I would have to look at my records.

19 "Question: Do you keep a firm hand on the  
20 business?

21 "Answer: My brother.

22 "Question: What is your brother's name?

23 "Answer: Theodore.

24 "Question: Is Theodore there all the time?

25 "Answer: Every day.

1  
2 "Question: Does anybody else work there in a  
3 management position or in a managerial position?

4 "Answer: Al Green runs it there sometimes.

5 "Question: Is that a half ownership or a  
6 total ownership?

7 "Answer: Total ownership.

8 "Question: Are you employed or do you own any  
9 other establishments?

10 "Answer: I don't understand the question.

11 "Question: Are you employed in any other  
12 occupation or do you own any other businesses?

13 "Answer: I think that comes from the electronic  
14 devices that will have to go to the Judge. That's  
15 from the bugging of my house. I think that question  
16 comes up there.

17 "Question: Are you saying that the question  
18 that has been posed to you is a result of electronic  
19 surveillance?

20 "Answer: Yes."

21 That is the end of the testimony, your Honor.

22 THE COURT: I think the issue is before me now.  
23 Our individual assignment calendar rules say that in  
24 2-A "One case is 'related' to another for purposes of  
25 this rule when, because of similarity of facts and

1  
2 legal issues or because the cases arise from the same  
3 transactions or events, a substantial saving of the  
4 whole Court is likely to result if the cases are  
5 assigned to the same Judge."

6 (b) "If the party filing the initial pleading  
7 believes that it is related to a case already assigned,  
8 whether or not the case is then pending, he shall  
9 indicate the title and number of the related case on  
10 the information sheet."

11 This is not a docketed case and, therefore,  
12 that doesn't apply.

13 Rule 5(a)(5) says The Miscellaneous Part Judge  
14 shall "empanel the grand jury, and hear and determine  
15 all matters relating to proceedings before the grand  
16 jury;"

17 There is a provision in Rule 2-F. "It shall be  
18 the continuing duty of each attorney appearing in any  
19 case to bring promptly to the attention of the clerk  
20 all facts which he believes are relevant to a deter-  
21 mination that his case and one or more other pending  
22 cases should, in order to avoid unnecessary duplica-  
23 tion of judicial effort, be heard by the same Judge."

24 It was brought to me instead of the clerk. I  
25 was able to speak briefly to Judge Dooling before he



1  
2 went back into his own Courtroom where he has a jury  
3 deliberating and he is indifferent to it. I don't see  
4 that there is any economy of time in referring the  
5 matter to him and I think that under Rule 5(a)(5) it's  
6 really my duty to hear it as the matter of the pro-  
7 ceedings before a grand jury.

8 MRS. ROSNER: I would merely suggest we fall  
9 within the rule for this purpose. I don't mean to  
10 suggest in any way that I expect that your Honor's  
11 ruling would be different from Judge Dooling's in any  
12 respect, but since Judge Dooling has the Vigorito  
13 matter, similar to this and more importantly, in the  
14 civil action commenced by Mr. Persico, was a docketed  
15 action in this Court, 73C1213.

16 Judge Dooling indicated the relief sought was  
17 premature, but the moving party, Mr. Persico, could  
18 certainly apply for relief when the matter became  
19 ripe. Since Judge Dooling has written an opinion, I  
20 would suggest it is covered by the related case rule  
21 and that since Mr. Persico now moves to suppress, the  
22 matter should go back to Judge Dooling.

23 THE COURT: I don't think so. I think we  
24 should go ahead.

25 I understand that the wiretap orders have been

1 brought up.

2 MR. DEL GROSSO: Yes.

3 THE COURT: Let me look at them to see and Mrs.  
4 Rosner to see if there is any basis for invalidity.

5 MRS. ROSNER: That's all we ask.

6 First of all, the government states on the  
7 record the orders have been signed by the Judges named  
8 on the dates. There's one day here --

9 MR. DEL GROSSO: I made a mistake as to the  
10 date, April 13th. They have been sealed, in custody  
11 of the Clerk. The government states this is sufficient  
12 by saying there has been an order, signed. It gives  
13 specifics. If there is to be a determination as to  
14 whether or not there was probable cause for these  
15 interceptions, we would respectfully ask that you  
16 alone, in camera, would determine the issue because of  
17 the type of situation, the type of investigation there  
18 is. It's highly sensitive material in those orders in  
19 the affidavit, the accompanying affidavits and this  
20 investigation would be just destroyed as a result of  
21 that being made available to the witness.

22 (Continued on next page.)

23 2/3nxt  
24  
25

1 MRS. ROSNER: May I suggest, your Honor, the  
2 relief we're asking for is exactly that which Judge  
3 Dooling granted to the petitioner in Vigorito, your  
4 Honor, and I would note, your Honor, that Judge Dooling  
5 ordered orders and affidavits turned over to counsel  
6 on the proviso that the matter not be made known to  
7 the persons who are the subject of the subpoena, hold-  
8 ing that this adequately protected their right to have  
9 counsel make an enlightened determination whether in  
10 fact there was a valid motion to suppress. That's all  
11 we're asking.

12 I don't think Mr. De'Grosso is even suggesting  
13 if the Court place that kind of proviso on the use of  
14 the materials, it would be violated as it certainly  
15 would not. That's all we're asking, Judge.

16 MR. DEL GROSSO: I don't think the statute had  
17 an objective that a defense attorney would be in the  
18 position of an appellate judge. If we must have an  
19 inspection, I would respectfully ask your Honor to  
20 determine whether or not there was probable cause. I'm  
21 in no way impugning the honesty or ethics of Mrs.  
22 Rosner.

23 I think, across the board, it would be only  
24 fair to have only the judge, the miscellaneous judge,  
25 who is hearing the motion, look into the matter,

1 determine whether or not there is probable cause.

2 If I may go further, your Honor, this Vigorito  
3 case is not exactly on point. Vigorito does not have  
4 immunity. I will point to two other cases, before  
5 Judge Dooling. The matter of John Garcia and Peter  
6 Guido. They had been immunized in the same proceeding  
7 that Mr. Vigorito is involved in and they were told  
8 they answer the questions or would be held in contempt.  
9 That's entirely a different situation from Mr. Vigorito  
10 to who is not given immunity.

11 MRS. ROSNER: As we pointed out earlier --

12 MR. DEL GROSSO: In Garcia's case, Judge  
13 Dooling refused to even look at the orders. Your Honor,  
14 I don't see how we can possibly go on with a Grand  
15 Jury investigation if we're going to continuously  
16 look into these orders.

17 I have an objection to the time involved, but  
18 if it must be done, I wish that you, your Honor, and  
19 you alone determine whether or not there was probable  
20 cause for those orders.

21 MRS. ROSEN: May I respond, Judge?

22 THE COURT: Yes.

23 MRS. ROSEN: It falls on my shoulders, not the  
24 Court's. I wish it could fall upon the Court's to  
25 advise the petitioner in this matter whether he has



1 just cause to refuse to answer because unlawfully  
2 electronic surveillance is employed.

3 Under 2515, of course, that is just cause.  
4 He has the right to, at his peril, have his counsel's  
5 determination to advise him whether there has been  
6 unlawful electronic surveillance.

7 THE COURT: He doesn't go to jail if the order  
8 is invalid. He just has to answer questions.

9 I'll grant Mr. Del Grosso's motion. I'll look  
10 at the orders in camera. I'll seal them and the Court  
11 of Appeals can look at them.

12 MRS. ROSNER: May I be heard further?

13 THE COURT: Yes.

14 MRS. ROSNER: The concept which Mr. DelGrosso  
15 advances that an in camera inspection is sufficient to  
16 protect the petitioner's rights was exactly the posi-  
17 tion rejected by the court in Alderman. This situation  
18 is no different --

19 THE COURT: Alderman was a trial of Mr. Alderman.

20 MRS. ROSNER: Alderman arose in the context of  
21 the defendant's request to know whether there had been  
22 unlawful electronic surveillance.

23 THE COURT: It wasn't Grand Jury witness case.

24 MRS. ROSNER: For purposes of the analysis, it's  
25 no different. It helps the petitioner naught to have

1 another District Judge pass on orders which have  
2 obviously one District Judge as passed upon by signing  
3 them.

4 THE COURT: If I find they are adequate and  
5 I direct Mr. Persico to answer and put him in jail,  
6 you can get a stay from the Court of Appeals while the  
7 Court of Appeals judges look at the order.

8 MRS. ROSEN: May I suggest, your Honor, I think  
9 the entire thrust of Judge Dooling's opinion in the  
10 Vigorito matter is that under 41(f), the defendant does  
11 not have to wait -- I'm sorry -- the petitioner does  
12 not have to wait to be held in contempt to have his  
13 remedy by way of a motion to suppress.

14 A motion to suppress can be made at any time;  
15 that there is a suspected or intended use of unlawfully  
16 obtained materials.

17 We don't have to wait to be held in contempt.  
18 41(f) is applicable at any point, pre- or post-indictment  
19 Pre- or post-subpoena.

20 Whenever an unlawful use is intended by the  
21 Government, you can move to suppress and a motion to  
22 suppress means that the petitioner has the right to  
23 be represented by counsel and to have counsel analyze  
24 the materials upon which the motion is predicated, not,  
25 most respectfully, the District Judge. That's simply

1 not a motion to suppress. That's what we're seeking  
2 here, your Honor.

3 We are not seeking a full-blown evidentiary  
4 hearing as for instance might be required on the ques-  
5 tion of minimization. All we're seeking is an examina-  
6 tion of the orders and supporting affidavits for a  
7 preliminary inquiry, whether they themselves, on their  
8 face are valid. That's what we're asking for under  
9 2515 and 41(f), and most respectfully, Judge, an in  
10 camera determination aids us naught. That is not the  
11 same as a right to move to suppress.

12 MR. DEL GROSSO: If we may get back to the  
13 Gelbart situation again and since the majority relied  
14 upon and used Title 18, United States Code, Section  
15 3504, here we're in subsection (1)(a). We're talking  
16 about an affirmation or denial of an illegal act.

17 The Government is saying it, therefore, has not  
18 been an illegal act. We're showing three orders signed  
19 by District Court judges. The witness in this case was  
20 not there at the original determination as to whether  
21 or not there were probable cause for good reason. If  
22 he were there, then, of course, the interceptions would  
23 have been impossible to accomplish.

24 Now, we're continuing an investigation. Now,  
25 if the witness himself can look into these or his



1 attorney can look, I can see no reason why the attorney  
2 would have to look into it. If it has to be done, we  
3 want it in camera. We respectfully rest upon your  
4 judgment.

5 THE COURT: The Gelbard case is unusual limita-  
6 tion on the duty of a Grand Jury witness to testify.  
7 The Gelbard case has been limited by the Collandra  
8 case.

9 MRS. ROSNER: I don't think for this reason.  
10 Collandra, in a footnote, specifically exempts from  
11 the coverage of the opinion the object of the Grand  
12 Jury witness based on 2515, as Judge Dooling points out  
13 in his opinions denying the Government's motion to  
14 reargue in the Vigorito matter.

15 Collandra is exclusively a Fourth Amendment  
16 case. It does not reach the scope of the statutory  
17 remedy provided by 2515. It specifically exempts  
18 reaching that point in a footnote of the opinion.

19 THE COURT: Rule 41(f) says that a motion to  
20 suppress evidence may be stayed in the court of the  
21 District of trial, as provided in Rule 12. We are not  
22 at this stage of trial.

23 MRS. ROSNER: Any notations to Rule 41(f) are  
24 absolutely clear on motions to suppress that motions  
25 can be made any time. The name of the case escapes



1 me.

2 THE COURT: Before indictment?

3 MR. ROSENER: Before anything. As a matter of  
4 fact, this Vigorito opinion specifically says that,  
5 Judge Dooling notes on the first page, that he's  
6 acting pursuant to Rule 41.

7 Furthermore, there's a case which, if I can  
8 have a moment, I can get you, decided by the Honorable  
9 Edward Weinfeld, Southern District of New York, enter-  
10 taining a motion to suppress when the contemplated  
11 action ultimately was begun in the Eastern District of  
12 New York. He held that 41 permits a motion as to  
13 suppression before any actions, as long as there is an  
14 anticipated use of --

15 (continued on next page.)  
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SS:ss  
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1 THE COURT: We'll take a short recess.

2 MRS. ROSNER: 2515 protects the petitioner  
3 against the use before a grand jury of unlawfully  
4 seized materials. That right is nugatory if he has  
5 to be held to wait in contempt to protect it.

6 THE COURT: 10 minute recess.

7 (Recess.)

8 MR. DEL GROSSO: Your Honor, before we go on,  
9 I would like to make, to use the term, I would like  
10 to make something perfectly clear, but I will attempt  
11 to. The government's position here is that these  
12 matters have been already been ruled upon by two  
13 District Court Judges in Eastern District. The  
14 electronic surveillance in this matter, I would refer  
15 to 18 United States Code 2518(8)(b). It says  
16 "Applications made and orders granted of this chapter  
17 shall be sealed by the Judge. As much applications  
18 and order shall be disclosed upon a showing of good  
19 cause before a Judge of contempt jurisdiction." In  
20 this case, the witness has not shown good cause why  
21 these orders and applications should be opened and  
22 reviewed.

23 In this particular situation, what has happened,  
24 Judge Bartels and Judge Neaher have ruled that there  
25 was probable cause of these interceptions coming about.

SS:GA  
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1 The Government's position is that this should  
2 never be opened. These Orders should never be reviewed  
3 unless there were good cause. The witness has not  
4 shown good cause at this time.

5 THE COURT: That's somewhat in line with what  
6 Judge Kaufman held Silber against the United States in  
7 275 Fed. Sup. at 765, where there a pre-indictment to  
8 suppress, and he said, "...Chief Judge Thompson issued  
9 the warrant, thus passing upon the legal sufficiency  
10 of the Affidavit, such action by a Federal Judge, or a  
11 United States Commissioner, in no way forecloses or  
12 inhibits a further challenge de novo under Rule 41-E,  
13 but such further challenge should usually wait the  
14 post-indictment state, unless the allegations by the  
15 complainant are supported by such factual allegations  
16 as require the Court to inquire further without delay."

17 MRS. ROSNER: May we respond to that, Judge? I  
18 hope we found the same cases. We rely upon the follow-  
19 ing cases for the proposition that a motion to suppress  
20 may be made at any time, whether or not any proceeding  
21 is pending. In re Fried, 161, Fed. 2d, 453, Second  
22 Circuit, 1947. In re Mandel, 54 Fed. Sup. 670 at 671,  
23 Southern District, 1942, and the Winfield opinion to  
24 which I made reference was affirmed by the Court of  
25 Appeals. It appeared at 17 F.R.D. 18. It was affirmed,



1        3        United States against Klapholz, 230 Fed. 2d, 484,  
2        Second Circuit, 1956, holding that a motion to suppress,  
3        pursuant to then what was then Rule 41-E may be made  
4        at any time pre- or post-indictment. I have it here.

5                THE COURT: Let me look at it.

6                MRS. ROSNER: If I may make the rest of the  
7        argument, Mr. Del Grosso made reference to the peti-  
8        tioner not showing good cause. I submit we have, and  
9        the good cause is this, your Honor: 18 United States  
10       Code 2515, which is the word of our Congress, says  
11       that the fruits of unlawful electronic surveillance  
12       may not be used in any way before a Grand Jury proceed-  
13       ing.

14               THE COURT: An Act of Congress is no more  
15       important than an Amendment to the Constitution.

16               Judge Kaufman was dealing with the Constitu-  
17       tional Amendment.

18               MRS. ROSNER: The Calandra case, and all of  
19       those cases, Silverthorne Lumber Company, the Kaufman  
20       opinion to which your Honor made references, are cases  
21       bottomed on the 14th Amendment.

22               Calandra specifically exempts from its coverage  
23       statutory remedies which may be available under the  
24       Omnibus Crime Control Act.

25               Congress went out of the way to provide --



1 4 THE COURT: Let me look at that case.

2 MRS. ROSNER: -- that the fruits of unlawful  
3 electronic surveillance may not be admitted. I refer  
4 your Honor to Head Notes 1 and 2 of the Opinion.

5 MR. DEL GROSSO: After you read that --

6 THE COURT: Wait a minute.

7 Judge Winfield denied the motion to suppress  
8 the evidence obtained by execution of search warrants.

9 MRS. ROSNER: That's correct.

10 THE COURT: He granted the motion with respect  
11 to evidence obtained after a reasonable time to bring  
12 the defendants before a Magistrate or United States  
13 Commissioner. I've said, under the Silber case, I'll  
14 entertain it. That's a different question.

15 MRS. ROSNER: The point is not what is the resolu-  
16 tion of the merits, the point is, the man is entitled  
17 to move to suppress in order to protect his right under  
18 2515, not to have unlawful electronic surveillance.

19 THE COURT: I have done more than is required  
20 under Judge Kaufman's opinion. I have examined the  
21 Orders of March 21, 1973, and April 9, 1973, by Judge  
22 Bartels, and the supporting papers, also the Order of  
23 Judge Neaher of May 8th, 1973. The March 21 Order was  
24 based on an application of Mr. DelGrosso, an Affidavit  
25 of Agent Nelson.

1 5 The Order provided for minimization of intercep-  
2 tions. The Affidavit shows probable cause to believe  
3 there were violations of law occurring. Adequate  
4 grounds to support the beliefs. A fair basis for saying  
5 that there was a necessity for something other than  
6 normal means of obtaining information, that the telephone  
7 was used so seldom that the oral interceptions was nec-  
8 essary.

9 The application is supported by an authorization  
10 from Attorney General Kleindienst to Assistant Attorney  
11 General Peterson, and a letter from Assistant Attorney  
12 General Peterson to Mr. Dillon. The April 9th Order  
13 was a similar Order, based on a similar application,  
14 Affidavit, Authorization and letter.

15 The extension was granted because it would have  
16 been impossible to install the necessary equipment and  
17 monitor all conversations in the interim. Since the  
18 next Order was not entered until April 8th, I also un-  
19 sealed the envelope with tapes, and I find the last tape  
20 under the April 9th Order was dated April 24, which was  
21 within the fifteen days permitted.

22 The May 8th Order of Judge Neaher was based on  
23 a similar application, Affidavit and authorization.

24 I did not find a letter from the Assistant Attor-  
25 ney General Peterson to Mr. Dillon, but I'm not sure

1 6- that such a letter is necessary.

2 MR. BARLOW: That letter would be just a letter  
3 notifying Mr. Dillon that Mr. Kleindienst had authorized.  
4 It's superfluous.

5 MR. DEL GROSSO: I have a copy of it, I'm sure,  
6 your Honor.

7 That was sent over -- We have a copy attached to  
8 the affidavit Order in application. The original would  
9 be down in my office; however, that was sealed prior to  
10 my getting the Order through the mail.

11 If I may, I can probably point it out to your  
12 Honor.

13 THE COURT: The authorization from Attorney Gen-  
14 eral Kleindienst says, "Pursuant to the power conferred  
15 on me, I hereby authorize the above-described applica-  
16 tion to be made by investigative or law enforcement  
17 officers of the United States as defined in Section 2510  
18 (7), of Title 18, United States Code." I would think  
19 that includes Mr. Del Grosso and Agent James W. Nelson,  
20 so I think there is adequate basis for it.

21 Now, I also am satisfied, from reading the  
22 Affidavit and applications that there are sufficient  
23 mention of other names in continuing investigation, and  
24 other facts that pre-indictment discovery of the informa-  
25 tion in those Affidavits and applications even to the



1 7 counsel for a witness would be improper. Counsel for a  
2 witness is in a much different situation from counsel  
3 for a defendant. All the witness has to do is answer  
4 questions. He's been granted immunity.

5 If the Order is invalid as found by some other  
6 Court at some other time, the immunity is nevertheless  
7 good, and I don't think that the Delbard case meant any-  
8 thing more than that. Therefore, I will direct the wit-  
9 ness to answer the question.

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11 (continued on next page.)  
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1 MRS. ROSNER: May I be heard further?

2 THE COURT: Yes.

3 MRS. ROSNER: I guess Mr. DelGrosso is very  
4 happy with the state of affairs as they existed and  
5 didn't want to hear any more. I don't quite under-  
6 stand, Judge, are you entertaining at this point a  
7 motion to suppress?

8 THE COURT: I'm entertaining it and denying it.

9 MRS. ROSNER: We haven't had an opportunity to  
10 make that motion.

11 THE COURT: I heard it this morning.

12 MRS. ROSNER: I have not had an opportunity to  
13 examine the materials.

14 THE COURT: You're not entitled.

15 MRS. ROSNER: I can't move to suppress. For  
16 instance, Judge, there might very well be, upon  
17 counsel's examination of the affidavits, arguments to  
18 be advanced concerning the case or other matters  
19 which the Court simply is not an advocate --

20 THE COURT: That argument should be made on  
21 the trial of any defendant indicted, not on the ob-  
22 structive action of a witness who should testify before  
23 the grand jury.

24 MRS. ROSNER: These proceedings are not made  
25 for the purpose of obstruction or delay.

2 1 THE COURT: I don't care what the purpose is.  
2 The effect is to delay grand jury investigation. I'm  
3 satisfied it is not the purpose of the United States  
4 Supreme Court to have long interruptions of grand jury  
5 investigations.

6 MR. DEL GROSSO: Will they be sealed today?

7 THE COURT: They will be resealed. Let me just  
8 state this. I have not examined --

9 MR. DEL GROSSO: Those are probably five and  
10 ten day reports, your Honor.

11 THE COURT: About ten or eleven envelopes of  
12 tapes and reports because I thought all I was con-  
13 cerned with was the validity of the initial orders.

14 MRS. ROSNER: I would like to make our position  
15 for the record clear, your Honor. What we are asking  
16 for is an opportunity for counsel alone to examine  
17 the orders and supporting affidavits in order to make  
18 an intelligent argument to the Court concerning why  
19 the evidence seized and the fruits of it which may be  
20 used before the grand jury should be suppressed.

21 The notion that such a motion is satisfied by  
22 an in camera determination by the Court, it seems to  
23 me was rejected by the Court in the United States  
24 against Alderman. This simply is not a motion to  
25 suppress.

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THE COURT: Alderman was a criminal case. This is a grand jury witness and he does not have the same rights as a defendant in a criminal case.

MRS. ROSNER: The principle is the same, Judge. I can't move to suppress by not knowing what the materials are.

THE COURT: If you have not made a motion, I do not deny it. I direct Mr. Persico to answer the questions or be held in contempt.

MR. DEL GROSSO: That will continue at 2 o'clock.

MR. BARLOW: Thank you very much.

(Time noted 1:00 o'clock p.m..)

1 (The following occurred at 2:50 p.m.)

2 THE COURT: All right.

3 MRS. ROSNER: We enjoyed it so much this morning,  
4 we are back.

5 THE COURT: Where are we at now?

6 MR. DEL GROSSO: Your Honor, the Government  
7 renews its motion to cite Mr. Persico for contempt for  
8 refusal to answer the question put to him by the Grand  
9 Jury. He has refused to answer.

10 THE COURT: All right. Let me hear the court  
11 reporter again.

12 MR. DEL GROSS: Do you want to hear the whole  
13 thing, your Honor?

14 THE COURT: As much as you think is necessary  
15 for me to make a finding.

16 MRS. ROSNER: It's very brief, Judge. We have  
17 just a few questions.

18 THE COURT: Read it all, then.

19 I take it you resumed sometime around 2:00  
20 o'clock, after the Grand Jury returned?

21 MRS. ROSNER: About 2:25, your Honor.

22 THE COURT: Yes.

23 MR. DEL GROSSO: Take it from where we started.

24 THE REPORTER: From this afternoon?

25 MR. DEL GROSSO: Yes.



1 THE REPORTER: "The witness, having been  
2 reminded that he was under oath by the foreman of the  
3 Grand Jury, testified as follows, examination by Mr.  
4 Del Grosso:

5 "Question: The question was, whether or not  
6 you are involved as an owner or as an employee of any  
7 other business or have you had any other occupation  
8 other than Dacts Workroom?

9 "Answer: As of now?

10 "Question: As of now.

11 "Answer: Well, I was a partner with Al Green  
12 in the A & A Lending. It was a company we formed but  
13 it never materialized.

14 "Question: Where is that located?

15 "Answer: Just money that invested. We were  
16 going to lend out to businesses, but we never lent  
17 any money out of this.

18 "Question: How long ago was this?

19 "Answer: About two years ago. I am not sure  
20 about the exact time. About two years ago, I think.

21 "Question: You were partners with Alvin T.  
22 Green:

23 "Answer: Right.

24 "Question: How long have you known Mr. Green?

25 "Answer: Since 1967.

1 "Question: You were introduced to him by whom?

2 "Answer: My family.

3 "Question: He's a friend of the family?

4 "Answer: Yes.

5 "Question: Had he had business with your  
6 family?

7 "Answer: With my family?

8 "Question: Yes.

9 "Answer: No. Just a social friend.

10 "Question: Just a social friend?

11 "Answer: Yes.

12 "Question: He's not Italian, is he?

13 "Answer: He's Jewish. We have --

14 "Off the record.

15 (Discussion off the record.)

16 THE REPORTER: "Answer: We have Jewish friends  
17 and Irish friends.

18 "Question: I just wondered if you grew up in  
19 the same neighborhood.

20 "Answer: I met him in 1967.

21 "Question: You say this was a lending company.  
22 Was this just a commercial venture?

23 "Answer: It was supposed to be a venture we  
24 were going into. Al Green put up some money and I was  
25 supposed to match it. It never materialized.

1 "Question: Do you have any other businesses?

2 "Answer: Horses, sports and numbers.

3 "Question: Is that an illegal gambling  
4 business?

5 "Answer: Yes.

6 "Question: Is that considered an illegal  
7 gambling business?

8 "Answer; Yes.

9 "Question: Are you in this alone or do you have  
10 a partner?

11 "Answer: Alone.

12 "Question: What is your base of operations?

13 "Answer: Anyplace. It changes from day to day.

14 "Question: Are you still involved in this, sir?

15 "Answer: Yes.

16 "Question: As of today you are involved in this?"

17 "Answer: Yes.

18 "Question: Where is your base of operations  
19 today?

20 "Answer: Before I answer that, can I speak to  
21 my counsel, before I answer that question?

22 "Question: Sure, you may.

23 "At this time Mr. Persico left the Grand Jury  
24 Room and reentered after consulting with his counsel.

25 "MR. DEL GROSSO: Read the question back,

1 reporter.

2 "At this time the question was read back.

3 "Answer: I -- you take them off the street  
4 corner. People take bets, you know. So there is  
5 really no place, in the house maybe, they'll take it  
6 in one day.

7 "Question: Are you the boss of this organiza-  
8 tion?

9 "Answer: Yes.

10 "Question: Do you have people working for you?

11 "Answer: Yes.

12 "Question: You do?

13 "Answer: Yes.

14 "Question: Who are these people?

15 "Answer: I guess we have to go back to the  
16 Judge again.

17 "MR. DEL GROSSO: Okay. We'll go upstairs to  
18 the Judge.

19 "Whereupon, Mr. DelGrosso and Mr. Persico left  
20 the room and reentered the room without going up to  
21 the Judge.

22 "Question: The question was, who were the  
23 individuals who worked for you?

24 "Answer: Can I read this into the record?

25 "Question: Yes, you may.



1 "Answer: You already told me that my house was  
2 bugged last spring.

3 "MR. DEL GROSSO: Yes.

4 "Answer: Now you're asking me who works for my  
5 gambling business. You know the answer to that ques-  
6 tion as a result of electronic surveillance of my  
7 home. As a result of electronic surveillance, I feel  
8 you're only asking me, for me to refuse to answer,  
9 because you know this information from the electronic  
10 surveillance in my home.

11 "I still maintain that the electronic sur-  
12 veillance on my home was unlawful and should not be  
13 permitted and you should not be permitted to ask me  
14 these questions.

15 "Question: Is that it?

16 "Answer: Yes.

17 "Question: I again ask you, sir, who are the  
18 individuals that work for you, and are you refusing to  
19 answer that question?

20 "Answer: Yes.

21 "Question: I ask the Grand Jury foreman to  
22 order the witness to answer that question.

23 "THE FOREMAN: You are hereby ordered to answer  
24 the questions under the terms of the power of the grant  
25 of immunity and the power of the Grand Jury.

1 "Answer: Immunity pertains to only me. Is  
2 that so?

3 "Question: That's so.

4 "Answer: It does not pertain to anybody else?

5 "MR. DEL GROSSO: No, it does not.

6 "Whereupon Mr. DelGrosso and Mr. Persico then  
7 left the Grand Jury chamber and reentered.

8 "Question: The question was, who are the  
9 individuals involved in the gambling operation, and do  
10 you refuse to answer? You were ordered to do so. You  
11 were ordered to do so by the Grand Jury foreman. Is  
12 that not correct?

13 "Answer: Yes.

14 "Question: Are you going to give us those names,  
15 sir?

16 "Answer: Before answering this question, I would  
17 like to know whether or not, if I am correct, that you  
18 already have this information as a result of illegal  
19 bugs in my home.

20 "MR. DEL GROSSO: I need not answer any such  
21 question. You have been ordered to give those names.  
22 If you will give those names, you will not be brought  
23 up before the judge. If you will not answer, we will  
24 have to go to the judge.

25 "You are going to have to go to the judge, sir?

1 Is that it, sir?

2 "Answer: Yes, let's go to the judge."

3 MR. DEL GROSSO: May --

4 THE COURT: All right. You have really one  
5 test question here.

6 MR. DEL GROSS: "Who are the individuals?"

7 THE COURT: Which does seem to be pertinent.

8 Mrs. Rosner, apart from the questions I have  
9 ruled on this morning, is there anything else you want  
10 to say?

11 MRS. ROSNER: Yes.

12 I believe that Mr. DelGrosso is in possession  
13 of the information which he now seeks to elicit from  
14 Mr. Persico, for these reasons, your Honor.

15 Upon information and belief, the Government  
16 has intercepted conversations of Mr. Persico and other  
17 individuals, the identification of those individuals  
18 is clear and explicit on the electronic surveillance  
19 which the Government has. There really is no purpose  
20 to this question, except to have the witness either  
21 commit a contempt or perjury, Judge.

22 The Government has no need for this information.  
23 They already have it out of Mr. Persico's own mouth,  
24 as a result of the electronic surveillance.

25 THE COURT: Isn't the Government entitled to have

1 it produced before the Grand Jury?

2 MRS. ROSNER: I don't think so, Judge.

3 THE COURT: All right. You have another ques-  
4 tion to go up on.

5 MRS. ROSNER: As a matter of fact, Judge, they  
6 can introduce, since they take the position that their  
7 surveillance was lawful, they can introduce the fruits  
8 of their electronic surveillance as evidence before the  
9 Grand Jury, to prove the matters which they now simply  
10 seek to have reiterated through Mr. Persico's mouth  
11 viva voce before the Grand Jury.

12 THE COURT: All right. I do not think that is  
13 an excuse.

14 I find him in contempt. I will sentence him to  
15 60 days in jail.

16 MR. DEL GROSSO: Beginning now?

17 THE COURT: Beginning now.

18 MRS. ROSNER: Your Honor, I don't think your  
19 Honor can do that, under Rule 42(b).

20 I would direct your Honor to United States  
21 against Bryant and Wilson, which is still in the slip  
22 opinions of the Second Circuit. It is not yet in the  
23 advance sheets.

24 It is a case where Judge Lasker attempted to  
25 hold in contempt under Rule 42(a) a recalcitrant



1 witness at a bank robbery trial. The Circuit Court  
2 reversed his determination and held that an orderly  
3 refusal to testify may not be punished as summary  
4 contempt. The witness is entitled to specifications  
5 of contempt and an opportunity to answer and prepare  
6 a defense and is entitled to a hearing under 42(b).

7 THE COURT: All right.

8 MRS. ROSNER: If I can have a moment --

9 THE COURT: You will have a hearing tomorrow  
10 at 2:00. He will be remanded, in the meantime.

11 MRS. ROSNER: I would --

12 MR. DEL GROSSO: Your Honor --

13 MRS. ROSNER: I don't think he can be remanded  
14 for this reason.

15 MR. DEL GROSSO: Your Honor --

16 THE COURT: I am remanding him.

17 MRS. ROSNER: If I may, your Honor?

18 MR. DEL GROSSO: I --

19 MRS. ROSNER: If I may be heard?

20 I think the import of Bryant and Wilson is that  
21 before a citation or any action in the way of contempt  
22 may be taken, the witness must have an opportunity to  
23 prepare a defense to the proceedings.

24 For instance, Judge, now that we are in this  
25 posture, I would be entitled to a full-blown motion to

1 suppress, based on the unlawful electronic surveillance.  
2 Such a motion takes time to prepare.

3 The witness is entitled to a 42(b) hearing and  
4 he simply can't be held in contempt until that's done,  
5 Judge. I think that's the import of the Bryant case.  
6 If your Honor would give me a moment, I would get the  
7 case and recant --

8 THE COURT: Well, you will --

9 MR. DEL GROSSO: May I say one thing?

10 THE COURT: I will find him in contempt now,  
11 subject to a review on a hearing on Monday -- or  
12 tomorrow at 2:00 o'clock, and remand him.

13 MR. DEL GROSSO: And Mr. Persico will not --  
14 won't be in contempt for 60 days, your Honor. It's  
15 for the life of the Grand Jury, which will be sub-  
16 stantially more than 60 days.

17 THE COURT: No. I am doing it 60 days. You  
18 can ask him more questions and see if you want anything  
19 more. If he doesn't answer within 60 days; he has the  
20 key to the jail. He can get out at any time he answers  
21 questions.

22 MR. DEL GROSSO: My understanding is he is  
23 remanded immediately and --

24 THE COURT: And tomorrow at 2:00 for a hearing.

25 MR. DEL GROSSO: Yes.

1 MRS. ROSNER: May I have a moment to produce  
2 Bryant and Wilson, your Honor? I don't think this  
3 procedure is correct under Rule 42 and I'd like just a  
4 moment to produce what I think is the relevant  
5 authority.

6 THE COURT: All right.

7 MRS. ROSNER: Thank you, Judge.

8 THE COURT: The marshal will take Mr. Persico.

9 (continued on next page.)  
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1 (In the matter of Alphonse Persico, Nancy Rosner  
2 for the Defendant, and Robert Del Grosso for the Govern-  
3 ment.)

4 THE COURT: I have been thinking about this Mrs.  
5 Rosner. The Court of Appeals differed in two respects:

6 First, that they did not relate to a contempt  
7 that was punished in the middle of the trial, and

8 Second, that they related to a punitive contempt,  
9 rather than a coercive contempt.

10 But I will read your case.

11 MRS. ROSNER: I will hand up to you United States  
12 against Wilson and Bryant, which is Docket No. 731574  
13 and 1475, decided November 28, '73, and I think, your  
14 Honor, it applies to the situation in that an orderly  
15 refusal to testify cannot be punished summarily.

16 I would ask leave to hand it up to the Court.  
17 I folded it to the Section where it is discussed.

18 MR. DEL GROSSO: May I read 28 United States  
19 Code, 1826, your Honor?

20 THE COURT: One at a time. This refers to  
21 criminal contempt. This is not a criminal contempt  
22 proceeding, as I understand it.

23 MRS. ROSNER: I think, your Honor, that the  
24 reasoning in Bryant and Wilson is applicable to any  
25 contempt, and I would note that the contempt which



1 2 occurred there was one which occurred in the midst of  
2 the trial, similar to what we have here in the midst of  
3 the Grand Jury proceeding.

4 I think the point is, Judge, that the orderly  
5 refusal to testify, whether it be in the midst of trial  
6 or before a Grand Jury, cannot be punished summarily,  
7 and in the light of the very serious Constitutional  
8 issues which we have here, we are entitled to proceed  
9 under Rule 42(b), and have a reasonable time to prepare  
10 a defense to this proceeding, which would involve a  
11 full-blown motion to suppress, based on the electronic  
12 surveillance in this case.

13 THE COURT: It can't be that a Grand Jury pro-  
14 ceeding may be interrupted while you hold a long pro-  
15 ceeding like that.

16 MRS. ROSNER: I'm sure that Judge Lasger said  
17 the same thing in the midst of his trial when the wit-  
18 nesses refused to answer.

19 A trial should not be aborted by a wrongful  
20 refusal to answer, but we have here the petitioner's  
21 liberty at stake, and an orderly refusal to answer  
22 simply cannot be punished summarily.

23 MR. DEL GROSSO: If I may read Title 28, United  
24 State Code, 1826, Section 1826, sub-section (a). It  
25 states that whenever a witness in any proceeding before

1 3 or ancillary to any Court or Grand Jury of the United  
2 States, refuses without just cause shown to comply with  
3 an Order of the Court to testify or provide other informa-  
4 tion, including any book, paper, document, record,  
5 recording or other material, the Court, upon such re-  
6 fusar, or when such refusal is duly brought to its  
7 attention, may summarily Order his confinement at a  
8 suitable place until such time as the witness is willing  
9 to give such testimony, or provide such information.

10 It says right there in the statute.

11 THE COURT: This is a different thing from a  
12 criminal contempt.

13 Mr. Del Grosso, will you prepare an Order which  
14 directs that Mr. Persico be confined for sixty days,  
15 or until he appears before the Grand Jury and testifies.

16 MR. DEL GROSSO: I will bring that up to you  
17 immediately, your Honor. Thank you very much.

18 MRS. ROSNER: Mr. Del Grosso, if you will wait  
19 just a moment.

20 In the light of the serious Constitutional issue  
21 and procedural issue that is raised, your Honor, I would  
22 make an application for bail, pending the determination  
23 of this matter, pursuant to Rule 42.

24 THE COURT: That destroys the effect of the  
25 imprisonment. I will not grant bail.

1 4 MR. DEL GROSSO: Thank you.

2 MRS. ROSNER: May I have the slip opinion back,  
3 Judge?

4 THE COURT: There is another case in the Court  
5 of Appeals that says this does not interfere with the  
6 right to hold a witness immediately in contempt, in  
7 civil contempt.

8 (Hearing adjourned.)

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1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 IN THE MATTER :  
6 of :  
7 ALPHONSE PERSICO :  
8 -----X

9  
10 United States Court House  
11 Brooklyn, New York

12 January 24, 1974  
13 2:00 P.M.

14 B e f o r e :

15 HONORABLE ORRIN G. JUDD, U.S.D.J.  
16

17 In Re: Grand Jury  
18  
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21

22 EMANUEL KARR  
23 OFFICIAL COURT REPORTER  
24  
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that the foregoing is a  
true and correct copy of the stenographic notes  
of the proceedings.  
Official Court Reporter  
U. S. District Court



1    **A p p e a r a n c e s :**

2

2            EDWARD J. BOYD, ESQ.,  
3            United States Attorney for the  
             Eastern District of New York

4            BY: ROBERT DEL GROSSO, ESQ.,  
                    -and-  
5            FRED BARLOW, ESQ.,  
             Assistant United States Attorneys

6  
7  
8            NANCY ROSNER, ESQ.,  
             Attorney for Alphonse Persico

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10  
11            \* \* \*

1 THE COURT: Do you have any other questions?

2 MRS. ROSNER: Your Honor, this afternoon the  
3 defendant would move -- would renew his motion made  
4 yesterday to suppress, pursuant to Rule 41, both the  
5 questions put to him and the answers which he made,  
6 on the ground that they are the fruits and exploita-  
7 tion of the unlawful electronic surveillance conducted  
8 at his home in the spring of this year.

9 THE COURT: We had a little dispute yesterday,  
10 I said you had made oral motion, which I denied, and  
11 then you said you had not made the motion.

12 MRS. ROSNER: No, I did not.

13 THE COURT: Now you say you are renewing.

14 MRS. ROSNER: If I said that, your Honor, I mis-  
15 spoke myself.

16 I certainly did intend to make that motion, and  
17 I intend to renew it today, your Honor.

18 THE COURT: Then go ahead.

19 As I said yesterday, I reviewed the matters, it  
20 took me not ten minutes, which I had adjourned, it took  
21 me about twenty-five minutes to go through what I thought  
22 was an adequate way.

23 MRS. ROSNER: Your Honor, as I understand the law,  
24 putting aside for a moment the issue of whether prior  
25 to being held in contempt a subpoenaed person has a

1 right to any sort of motion to suppress, it seems to me  
2 clear that once --

3 THE COURT: I granted you that.

4 MRS. ROSNER: Once there is a contempt proceed-  
5 ings, certainly by way of defense the individual held  
6 in contempt has the right to move to suppress the ques-  
7 tions put to him on which there is a refusal to answer,  
8 and of course the suppression of such question would  
9 result in a dismissal of the contempt proceedings.

10 And in that vein, your Honor, we renew our motion  
11 to suppress.

12 In line with that motion, I would make applica-  
13 tion for the wiretap Orders and supporting affidavits  
14 to be turned over.

15 THE COURT: I denied that yesterday, I continue  
16 in that view.

17 MRS. ROSNER: Your Honor, the second matter which  
18 we wish to make application on is the question of bail.

19 The Section, I believe, pursuant to which Mr.  
20 Persico is now held in custody is Title 18, Section  
21 1826.

22 MR. DEL GROSSO: 23.

23 THE COURT: 28.

24 MRS. ROSNER: I am sorry, Title 28, Section 1826,  
25 entitled, "Recalcitrant Witness."

1           Your Honor, that Section makes clear that bail  
2 is available when commitment is pursuant to that Sec-  
3 tion and should be granted unless the appeal is either  
4 frivolous, or taken for delay, and I submit, your Honor,  
5 that neither of those conditions can be met in this  
6 case.

7           I would cite your Honor to Kenneth Tierney  
8 against the United States, 93 Supreme Court 17, decided  
9 September 12, 1972, an opinion by Mr. Justice Douglas,  
10 granting bail to a witness held in civil contempt, where  
11 the ground upon which the witness refused to answer was,  
12 as we have here, that questions were predicated upon un-  
13 lawful electronic surveillance.

14           In his opinion, Mr. Justice Douglas indicated  
15 that there is very strong preference for bail, and where  
16 there is a showing of Constitutional issue which may be  
17 raised by way of defense, the very, very hard preference  
18 is for bail.

19           I would indicate --

20           THE COURT: Mr. Del Grosso, would bail of \$150,000  
21 be adequate?

22           MR. DEL GROSSO: No, your Honor, in this situa-  
23 tion, bail would do absolutely nothing to continue this  
24 case. The Government, the Government has asked for im-  
25 munity, immunity was granted for the particular reason



1 that the questions were asked in the Grand Jury.

2 Mr. Persico has the key to the door, all he has  
3 to do is come in and answer the questions.

4 MRS. ROSNER: If I may, your Honor, I have repre-  
5 sented Mr. Persico in the past, I represented him in a  
6 trial this summer in the Southern District of New York  
7 in a charge on which Mr. Persico was acquitted, your  
8 Honor. He was admitted to bail in a far lesser amount  
9 in the course of that proceeding, and always appeared  
10 when required to do so.

11 I would; submit, your Honor, most respectfully,  
12 that there is absolutely no possibility that this man  
13 is going to become a fugitive. We only wish an oppor-  
14 tunity to litigate what I suggest are very serious  
15 Constitutional questions.

16 THE COURT: I think it is better that the Court  
17 of Appeals decide it.

18 It seems to me the purpose of refusing to answer  
19 is delay, and that delay would have serious consequences  
20 to the Government.

21 MRS. ROSNER: I was going to comment, your Honor,  
22 that the 1826 also provides for an expedited appeal,  
23 where the subpoenaed person is released on bail. The  
24 proceedings must be completed within thirty days. The  
25 term for which Mr. Persico is going to be incarcerated,

1 and certainly the term for which this Grand Jury is  
2 expected to continue, is now sixty days.

3 There is no real showing here by the Government,  
4 your Honor, whether delay of thirty days is going to  
5 impede this investigation, and I suggest there is no  
6 good reason.

7 MR. DEL GROSSO: The very fact that Mr. Persico  
8 is here and has been cited for contempt is proof enough  
9 that there has been impediment to the Grand Jury investi-  
10 gation.

11 MRS. ROSNER: As I understand it, your Honor,  
12 on the very day that the subpoena issued to Mr. Persico  
13 was made returnable, that is yesterday, the 23rd, two  
14 other witnesses were subpoenaed before the Grand Jury,  
15 so that Mr. Del Grosso cannot complain that the life  
16 of the Grand Jury is unfairly extended by the minimal  
17 period of time that is going to be encompassed in taking  
18 an appeal in this case.

19 Mr. Del Grosso does not even suggest, your Honor,  
20 that Mr. Persico is the type of individual whom he fears,  
21 or that there is any reasonable likelihood of believing,  
22 is going to become a fugitive: That is absolutely not  
23 the case.

24 All we want is an opportunity to litigate the  
25 issue, your Honor, and it will be done as expeditiously

1 as is humanly possible.

2 I submit that bail in a sum, in a reasonable  
3 amount, should be fixed, as the opinion of Mr. Justice  
4 Douglas in the Tierney case indicates is the very, very  
5 strong preference.

6 We are not raising frivolous issues, these are  
7 very serious Constitutional issues.

8 MR. DEL GROSSO: Your Honor, that --

9 THE COURT: You are asking me to review a coordin-  
10 ate Judge which I think I could not do properly.

11 I think the proper place to determine whether I  
12 was wrong in following Judge Bartels and Judge Neaher is  
13 the Court of Appeals.

14 I will deny that.

15 MR. DEL GROSSO: Thank you, your Honor --

16 MRS. ROSNER: I agree, your Honor, but I think  
17 we are entitled to bail for that proceeding.

18 MR. DEL GROSSO: Thank you very much, your Honor.

19  
20 (continued on next page.)  
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1 MRS. ROSNER: I agree, your Honor, and I intend  
2 to take an appeal, but I can't do it this afternoon,  
3 your Honor --

4 THE COURT: Certainly the affect, and I think  
5 the purpose of the appeal is delay, and I don't think  
6 there should be delay.

7 MR. DEL GROSSO: Thank you.

8 The Grand Jury meets again on Wednesday, if Mr.  
9 Persico wishes to --

10 MRS. ROSNER: If I may just add, your Honor, the  
11 statute very clearly contemplates that there is some  
12 period of delay necessarily encompassed by the filing  
13 of an appeal. That is unavoidable. I can't go to the  
14 Court of Appeals this afternoon; if I could, I would --

15 THE COURT: Yes --

16 MRS. ROSNER: But the statute also provides for  
17 bail, clearly contemplating that whatever reasonable  
18 delay is necessary, is not unnecessary or unreasonable  
19 delay, such that bail should be denied.

20 Of course we need some time to take an appeal.  
21 But the statute contemplates that very fact, and con-  
22 templates a remedy in having bail.

23 THE COURT: Well, if he is confined, he may change  
24 his mind.

25 MR. DEL GROSSO: Thank you, sir.



1 MRS. ROSNER: Well, that is purely punitive,  
2 your Honor.

3 THE COURT: No, it is coercive.

4 MRS. ROSNER: While Mr. Persico is in the court-  
5 room -- Mr. Del Grosso, Mr. Del Grosso, there is one  
6 other thing, I am sorry.

7 MR. DEL GROSSO: I am sorry.

8 MRS. ROSNER: While Mr. Persico is in the court-  
9 room, your Honor, I would like to make it clear that in  
10 addition to the ground stated at the time he refused to  
11 answer, he also relies, although I am aware of the  
12 Castega case, on the grounds that the immunity extended  
13 to him as explained to him, is not commensurate with his  
14 Fifth Amendment privilege.

15 In addition, Mr. Del Grosso, you promised to  
16 serve me an Order of Contempt, and you have not.

17 THE COURT: I signed it yesterday.

18 Where is it?

19 MR. DEL GROSSO: I have it right here.

20 THE COURT: Give a copy to Mrs. Rosner.

21 You should have done that earlier.

22 MR. DEL GROSSO: I just saw Mrs. Rosner this  
23 afternoon.

24 THE COURT: All right.

25 MRS. ROSNER: I didn't have an opportunity in

1 the office.

2 THE COURT: All right, all right.

3 (The hearing was concluded.)

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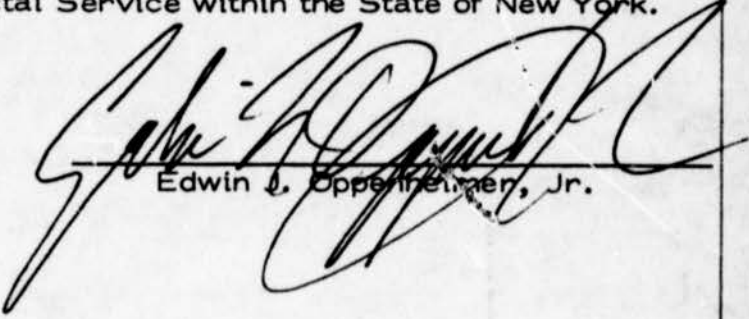
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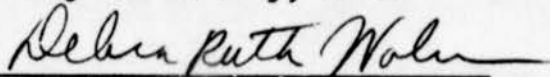
STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK)

EDWIN J. OPPENHEIMER, JR., being duly sworn, deposes and says: That deponent is not a party to this action, is over 18 years of age, and resides at 84 Riverside Drive, New York, New York. That on the 4th day of February, 1974, deponent served the within Appendix for Appellant Persico, upon Robert DelGrosso, Esq., Assistant United States Attorney, attorney for the United States in this action, at 225 Cadman Plaza, Brooklyn, New York, the address designated by said attorney for that purpose, by depositing true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

  
Edwin J. Oppenheimer, Jr.

Sworn to before me this

4th day of February, 1974.



DEBRA RUTH WOLIN  
Notary Public, State of New York  
No. 30-4509422  
Qualified in Nassau County  
Commission Expires March 30, 1975